

1 JManibusan.RES

2 LEONARDO M. RAPADAS
United States Attorney
3 KARON V. JOHNSON
Assistant U.S. Attorney
4 Suite 500, Sirena Plaza
108 Hernan Cortes
5 Hagåtña, Guam 96910
Telephone: (671) 472-7332/7283
6 Telecopier: (671) 472-7334/7215

7 Attorneys for United States of America

FILED
DISTRICT COURT OF GUAM
OCT 14 2005
MARY L.M. MORAN
CLERK OF COURT

8
9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE DISTRICT OF GUAM**

11 UNITED STATES OF AMERICA,)

CRIMINAL CASE NO. 89-00104

12 Plaintiff,)

13 vs.)

14 JOHN G. MANIBUSAN,)

**GOVERNMENT'S RESPONSE TO
PETITION TO AMEND
JUDGMENT**

15 Defendant.)
16

17 The defendant has filed a motion to correct sentence pursuant to Federal Rule of Criminal
18 Procedure 36, which provides for the court to correct a clerical error in a judgment. Defendant's
19 problem, however, is not a clerical error, but rather a judgment that could be more complete.
20 Defendant waived Indictment (Exhibit 1a), and pled guilty to an Information (Exhibit 1b). It
21 clearly concerns an offense committed in early 1987, yet the Sentencing Guidelines did not take
22 effect until November 1, 1987. Thus, defendant is eligible for parole.
23 The government agrees with his request, that an amended judgment be entered, nunc pro tunc to
24 March 16, 1990, reflecting that "defendant was convicted of the offense of possession with intent
25 to distribute heroin concerning an offense which occurred in early 1987."

26 D.B. Drew, Warden of the Talladega Federal Correction Institution, indicated that
27
28

1 defendant was sentenced for crimes arising after the effective date of the Sentencing Guidelines.
2 He based his belief in part on a presentence report citing that the offense of conviction occurred
3 in March 30, 1988. The presentence report is in the custody of the U.S. Probation Office. It
4 appears to be incomplete. Although it indicates that defendant distributed heroin during 1986
5 and 1987 for a Joseph G. Manibusan, the only specific incident it records is a controlled buy
6 DEA did from the defendant in March, 1988. Hence the confusion on Warden Drew's part.

7 Warden Drew also denied defendant's request for parole because the judgment cited that
8 after his 12 years of incarceration, he was placed on supervised release for five years. The
9 government is puzzled as to why the court did this, and why the attorneys did not object at the
10 time, because both parties clearly intended the sentence to be pre-Guidelines. The government
11 believes this imposition of five years supervised release is error, and should not be part of the
12 amended judgment. Thus, under former 18 U.S.C. § 4205, defendant would be eligible for
13 parole after serving one-third of his sentence, or four years.

14 At the time of his federal sentence, the defendant was in local custody facing charges of
15 manslaughter, robbery and burglary. He was brought into federal court to dispose of the heroin
16 charge pursuant to a writ ad prosequendum (Exhibit 2). After he was sentenced, he was returned
17 to local custody and the U.S. Marshal's Service placed a detainer on him (Exhibit 3). He was
18 sentenced on the local offenses September 20, 1990, released May 19, 1999, and turned over to
19 federal custody (Exhibit 4). At the time it imposed sentence, the court had ordered that
20 defendant be committed to the custody of the U.S. Marshal. Defendant appears to argue that the
21 court intended his federal sentence to start running immediately, so that he would have been
22 eligible for federal parole in 1994.

23 In fact, the district court did not have the authority to take defendant into federal custody,
24 because the court had only obtained jurisdiction of him pursuant to a writ ad prosequendum,
25 which provided that he be returned to local custody when the federal matters were completed. A
26 more likely reading of the court's remarks is that defendant was to be turned over to the U.S.

1 Marshal upon disposition of his local charges, including whatever term of imprisonment was
2 ordered. Defendant is not entitled to any credit for time served on the local charges. Former 18
3 U.S.C. § 3568 provided that the Attorney General was to give such credit only in connection with
4 the offense or acts for which the sentence was imposed.

5 In summary, the government agrees that this Honorable Court should enter an amended
6 judgment clearly reflecting that defendant's crime of conviction was pre-Guidelines, and
7 omitting the imposition of five years supervised release. The court does not have the authority
8 to order the Parole Board to grant the defendant parole. Under former 18 U.S.C. § 3568, the
9 Attorney General, Department of Justice, and the Bureau of Prisons, not the courts, had the
10 responsibility of computing sentences, giving credit for time served, and making decisions
11 concerning parole. With the amended judgment, however, defendant should be able to renew his
12 application for parole accordingly.

13 RESPECTFULLY SUBMITTED this 13th day of October, 2005.

14 LEONARDO M. RAPADAS
15 United States Attorney
16 Districts of Guam and the NMI

17 By: Karon V. Johnson
18 KARON V. JOHNSON
19 Assistant U.S. Attorney
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FILEDOffice of the Clerk
DISTRICT COURT OF GUAM
AGANA, GUAM

SEP 13 1989

United States District Court

DISTRICT OF GUAM

①
MARY L. MICHELS
Clerk of CourtUNITED STATES OF AMERICA
v.

JOHN G. MANIBUSAN

WAIVER OF INDICTMENT**CR 89-00104**

CASE NUMBER:

I, JOHN G. MANIBUSAN, the above named defendant, who is accused of

Possession with intent to distribute heroin, in violation of Title 21, United States Code, Sections 841(a)(1) and Title 18, United States Code, Section 2,

being advised of the nature of the charge(s), the proposed information, and of my rights, hereby waive
in open court on 9/13/89 prosecution by indictment and consent that the
Date
proceeding may be by information rather than by indictment.

Defendant

JOHN G. MANIBUSAN

Counsel for Defendant

MICHAEL F. PHILLIPS

Before

Case 1:89-cr-00104
Judicial Officer

Document 25

Filed 10/14/2003

Page 4 of 11

1 D. PAUL VERNIER, JR.
 2 Acting U.S. Attorney
 3 FREDERICK A. BLACK
 4 Assistant U.S. Attorney
 Suite 502-A, PDN Building.
 238 Archbishop Flores Street
 Agana, Guam 96910
 Telephone: 472-7332/7283

5 Attorneys for United States of America

FILED
 Office of the Clerk
 DISTRICT COURT OF GUAM
 AGANA, GUAM

SEP 13 1989

MARY L. MICHELS
 Clerk of Court

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 7
 8 IN THE UNITED STATES DISTRICT COURT
 9 FOR THE TERRITORY OF GUAM

10 **CR 89-00104**
 11 UNITED STATES OF AMERICA,)
 12 Plaintiff,)
 13 vs.)
 14 JOHN G. MANIBUSAN,)
 15 Defendant.)
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INFORMATION
 Possession with Intent to
 Distribute Heroin
 [21 U.S.C. § 841(a)(1)
 and 18 U.S.C. § 2]

On or about early 1987, in the District of Guam, JOHN G.
 MANIBUSAN, did unlawfully, knowingly, willfully and
 intentionally possess with intent to distribute less than 100
 grams of heroin, a Schedule I narcotic controlled substance, in

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//

1 violation of Title 21, United States Code, Section 841(a)(1)
2 and Title 18, United States Code, Section 2.

3 DATED this 12th day of September, 1989.

4
5 D. PAUL VERNIER, JR.
6 Acting U.S. Attorney
7 District of Guam

8 By: Frederick A. Black
9 FREDERICK A. BLACK
10 Assistant U.S. Attorney
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1 K. WILLIAM O'CONNOR
United States Attorney
2 FREDERICK A. BLACK
Assistant U.S. Attorney
3 Suite 502-A, PDN Building
238 O'Hara Street
4 Agana, Guam 96910
Telephone: 472-7332/7283

5 Attorneys for United States of America
6

7
8 IN THE DISTRICT COURT OF GUAM
9 TERRITORY OF GUAM

10 UNITED STATES OF AMERICA,
11 Plaintiff,

12 vs.

13 JOHN MANIBUSAN,
14 DANIEL TURNER, and
MARTIN VILORIA,

15 Defendants.
16

CRIMINAL CASE NO. 89-00050

WRIT OF HABEAS CORPUS
AD PROSEQUENDUM

17
18 TO: OFFICER IN CHARGE
Guam Prison Facility
19 Territory of Guam

20 This Court finds that JOHN MANIBUSAN, DANIEL TURNER and MARTIN VILORIA
21 are now in the custody of the Guam Prison Facility and that said prisoners are
22 required to appear before this court to be arraigned on federal narcotic
23 charges.

24 IT IS HEREBY ORDERED that the Officer in Charge of the Guam Prison
25 Facility or his authorized agent or any Federal law enforcement agent shall
26 produce JOHN MANIBUSAN, DANIEL TURNER and MARTIN VILORIA before this court

FILED
Office of the Clerk
DISTRICT COURT OF GUAM
AGANA, GUAM
JUL 1 6 1989

MARY L. MICHELS
Clerk of Court

1 forthwith and whenever necessary hereafter to attend court appearances in the
2 above-entitled case and upon completion of said prosecution and/or court
3 appearances and/or upon further order of the court, return said prisoners to
4 their place of confinement.

5 SO ORDERED this 13th day of July, 1989.

6
7 /s/ Phyllis Halsey Atkins
8 United States Magistrate
9 District Court of Guam

10 SUBMITTED BY:

11 /s/ FREDERICK A. BLACK

12 FREDERICK A. BLACK
13 Assistant U.S. Attorney
14
15
16
17

18 ***I hereby certify, that the annexed***
19 ***instrument is a true copy of the***
20 ***original on file in my office.***

21 **ATTEST: Mary L. Michels, Clerk**
22 **District Court of Guam**
23 **Territory of Guam**

24 By: Rosita P. Pasa-Rius
25 Deputy Clerk
26

DETAINER

(See USMM 622.04)

UNITED STATES MARSHAL

DISTRICT OF GUAM

P.O. BOX 3396

AGANA, GUAM 96910

TO:

OFFICER IN CHARGE
 ROSARIO DETENTION CENTER
 GUAM POLICE DEPARTMENT

DATE: MARCH 19, 1990

SUBJECT: MANIBUSAN, JOHN G.
 OUR NO. 00488-093
 FEDERAL JUDGEMENT
 NO. CR-89-00104
 12YEAR SENTENCE

Please accept this Detainer against the above-named subject who is currently in your custody.

When the subject is to be released from your custody, please notify this office at once so that we may assume custody if necessary. If subject is transferred from your custody to another detention facility, we request that you forward our Detainer to said facility at time of transfer and advise this office.

The notice requirements of the Speedy Trial Act of 1974 (P.L. 93-619) apply if the Detainer is based on pending Federal criminal charges which have not yet been tried. The notice requirement provisions do not apply to Detainers lodged for charges which have already been tried or for which no trial is required, such as parole revocation Detainers or sentencing Detainers. Further, the notice requirement provisions would not apply to Detainers lodged against prisoners who have not yet been sentenced at the time the Detainer is lodged. If there is an "X" mark in the following space, the notice requirements of the Speedy Trial Act apply and you are requested to give a copy of the Detainer to the prisoner and to complete the attached Form USM-17, NOTIFICATION REQUIREMENTS—SPEEDY TRIAL ACT, in duplicate, and return both copies of the Form USM-17 to this office with receipted copies 2 and 3 of this Detainer. ☐

Special instructions also apply when the Detainer is based on a warrant issued by the U.S. Parole Commission. If there is an "X" mark in the following space, please follow the instructions on the reverse of this form, acknowledge receipt on copies 2 and 3 of this Detainer and return them to this office in the enclosed self-addressed envelope. ☐

If there are no "X" marks in the above blocks, no further action is required except you are requested to give a copy of the Detainer to the Prisoner and to acknowledge receipt of this Detainer on copies 2 and 3 and return them to this office in the enclosed self-addressed envelope.

Very truly yours,

RECEIPT	
Date:	3/19/90
Signed:	[Signature]
Title:	

EDWARD N. CAMACHO
 United States Marshal

BY: PHILIP T. KRELL
 INSPECTOR, USMS

DEPARTMENT OF CORRECTIONS

Dipattamenton Mangngurihi

P.O. Box 3236

Hagåtña, Guam 96932

APPENDIX G

FILE COPY


No: 05-19-99-04

RELEASE ORDER

Pursuant to 8 GUAM CODE ANNOTATED §120.38, the following named person is released from imprisonment on MAY 19, 1999 at 8:00 a.m.

A. Last Name First Name Middle Name MANIBUSAN, John G.			B. Birthdate (Mo,Dy,Yr) 05-13-59	C. Social Security / Passport No. 586-64-7890
D. Mailing Address: Box No./Street No. City State Zip Code UNITED STATES MARSHAL SERVICES AND FEDERAL PRISON SYSTEM			E. Guam Address Upon Release: NONE PROVIDED	
F. Case No(s): CF 0145-89	Conviction(s): MANSLAUGHTER (1st Degree) (Two Counts of Aiding and Abetting to); ROBBERY (2nd Degree) (One Count); BURGLARY (2nd Degree).	Sentence(s): TEN (10) YEARS imprisonment and each count shall run concurrent to the other; Five (05) years imprisonment, concurrent; Five (05) years imprisonment, concurrent; Three (03) years Special Parole.		G. Aggregate Sentence(s) TEN (10) YEARS
Per Judgment, reference to the sentence, the defendant was adjudicated guilty in Federal District court of Guam, CR-89-00104 for Possession With Intent To Distribute Heroin, Twelve (12) years imprisonment and Five (05) years Supervised Release; The ten (10) years sentence (CF 0145-89) shall run consecutively to the twelve (12) years sentence (CR-89-00104).				
H. Conviction Date (Mo. Dy. Yr.) 07-27-90/06-28-94	I. Sentenced Date (Mo. Dy. Yr.) 09-20-90/01-20-95	J. Date Sentence Began (Mo. Dy. Yr.) 09-20-90	K. ACF Admission Date (Mo. Dy. Yr.) 07-30-90	
L. INS Detainer File No./Date File NONE	M. Special Parole: () NO (XX) YES THREE (03) YEARS	N. Probation to Follow: (XX) NO () YES	O. Total Fines / Costs: NONE	
Special Court Order / Others: PLEASE REFER TO THE COMMITMENT ORDER OF SEPTEMBER 20, 1990; JUDGMENT OF APRIL 25, 1995 AND UNITED STATES DISTRICT COURT JUDGMENT CR-89-00104. **PURSUANT TO THE TITLE 9 GUAM CODE ANNOTATED, SECTION 80.70, YOU SHALL UPON RELEASE REPORT TO THE PAROLE SERVICES DIVISION (473-7000 TIVAN) FOR PROCESSING.				
Q. COMPUTATION OF CONFINEMENT CREDITS:				
1. Date Sentence began (Mo. Day, Yr.)		09-20-90..... (263) (Julian Date)		
2. Full-time Release Date (Mo. Day, Yr.)		09-19-2000... (128) (Julian Date)		
3. Pre-Trial Detention (From: 05-20-89 To: 09-19-90)		488.....days		
(From: NONE To: NONE)		NONE.....days		
4. Prisoner Public Works Program (PPWP): NONE } hours (divided by) 40 hrs. = NONE		NONE.....days		
5. Adjusted Full-Time release Date (less 3 & 4) (Mo. Day, Yr.)		**05-19-99.....(139) (Julian Date)		
6. Actual Time Served (Aggregate Sentence less #4)		10 yr(s) 00 mo(s) 00 day(s)		
7. Total Time Credited		10 yr(s) 00 mo(s) 00 day(s)		
R. TYPE OF RELEASE: (XX) FULL-TIME ** (XX) SPECIAL PAROLE () COURT ORDER () SPECIAL PROBATION (XX) OTHER: FEDERAL HOLD PER USMM 622.04 / 03-19-90.				

Revised: March 28, 1997/rwm; SSA. Disk #23


ANGEL A. R. SABLAN
DIRECTOR OF CORRECTIONS

APR 21 1999

CC: Attorney General, Guam Police Dept., Probation Office, Inmate's File, ACF, CCSD, PSD, GDF / Federal and Central Control

PRISONER REMAND OR ORDER TO DELIVER AND
RECEIPT FOR UNITED STATES PRISONERS

UNITED STATES MARSHAL

DISTRICT OF CHANDLER

TO: U.S. - A. F.
(Name & Title)

DATE: 5-19-99

THE FOLLOWING NAMED UNITED STATES PRISONER(S):

YOUNG, TONY CMI

4

MANIBUKAN, JOHN A

5

6

19 04 7 90

(By L. K. H. - 1515 5-19-99)

RECEIPT

THE ABOVE NAMED UNITED STATES PRISONER(S) WERE RECEIVED:

BY: J.C. Turner

TITLE: COPIE

DISTRICT OR ORGAN. ADDRESS D.O.C.

(PRIOR EDITIONS MAY BE USED)

☒ are herewith remanded to your custody

☐ are to be delivered to representative
presenting and signing this order

Gregory L. Salas
United States Marshal

BY: [Signature]
Deputy U. S. Marshal

Form USM-41
(REV. 11/83)
(Supersedes USM-40,
[Short Form])